

The Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act may be found at 86 Ill. Adm. Code 130.415. (This is a GIL.)

June 6, 2007

Dear Xxxxx:

This letter is in response to your letter dated September 29, 2006, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Enclosed is a copy of a recent email I sent concerning the need for our company to have some clarification concerning shipping and handling charges. Please review. My main question is this:

If we are to charge shipping & handling as one line item, is the whole amount taxable?

Our shipping charges to our customer's [sic] are not predetermined and are charged according to what the estimated amount from the shipping company, therefore the charge could be under, but in most cases is over what the actual charge ends up to be. Handling is charged to cover the costs of packaging, loading, unloading and placement of materials.

I have reviewed your tax code, as well as another individual in our office. We seem to interpret your law differently. I need specific clarification. Additionally:

If we were to re-name our description 'handling' which would be inclusive of both (shipping & handling) does that make a difference?

DEPARTMENT'S RESPONSE:

For information regarding the Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act please see 86 Ill. Adm. Code 130.415. Transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

As noted in subsection (d) of Section 130.415, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

You have asked about charging shipping and handling as one line item labeled as "handling." In general, handling charges represent a retailer's cost of doing business. A retailer's cost of doing business are always included in gross receipts subject to tax. See, 86 Ill. Adm. Code 130.410. However, the Department recognizes that handling charges are often stated in combination with shipping charges. As previously described above, charges labeled as "shipping and handling," or "delivery or transportation" charges are not taxable if it can be shown that such charges are separately contracted for and are reflective of the actual costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the excess is subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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TDC:msk